

## CALENDAR ITEM

**101**

A     Statewide

02/20/15

S     Statewide

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### **CONSIDER SPONSORING STATE LEGISLATION TO MODERNIZE THE STATE LANDS COMMISSION'S AUTHORITY REGARDING THE PERMITTING OF GEOGPHYSICAL AND GEOLOGICAL SURVEYS**

#### **SUMMARY:**

This proposed legislation would change the statutory location of the geophysical survey permit program over which the State Lands Commission (Commission) has jurisdiction and require the Commission to promulgate implementing regulations.

#### **EXISTING LAW:**

Existing law authorizes the Commission to permit geological or geophysical surveys on sovereign lands in state waters, subject to specified terms and conditions. Existing law took effect in 1941 and is contained in a division of the Public Resources Code pertaining to oil and gas leasing (Public Resources Code section 6826). The statutory authority was likely placed in this area because most geophysical or geological surveys on state lands during this time were in support of oil and gas exploration. Today, these surveys are generally conducted for non-oil and -gas purposes. They are conducted to obtain critical data on a variety of ocean resources and uses, including areas of essential fish habitat, underwater structures (such as oil and gas pipelines and fiber-optic cables), nearshore sand erosion and deposition, seafloor changes, seafloor topography, seafloor hazards and debris, and offshore cultural resources. This information contributes to a wide variety of efforts to protect and preserve California's offshore environment and resources.

In 1982, the Commission adopted regulations to implement the geological and geophysical survey program. These regulations require permits to conduct geophysical and geological surveys on state lands and specify the required material to submit with an application (California Code of Regulations, title 2, section 2100).

#### **BACKGROUND AND ANALYSIS:**

Geophysical surveys are conducted in the marine environment or on inland waterways to perform exploration for scientific, engineering, safety, and research purposes. Any

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person or entity seeking to conduct surveys on state lands that are not legislatively granted to a local jurisdiction must obtain a permit from the Commission. The permits are intended to ensure that survey operations are protective of public safety and the marine environment. Current offshore geophysical permittees include the U.S. Geological Survey, Fugro West, Inc., EcoSystems Management Associates, Inc., and other entities that contract with public agencies, universities, and private companies that need data that can only be obtained through geophysical surveys.

Geophysical surveys use a variety of acoustic-generating or passive (non-acoustic) equipment to obtain critical data on engineering projects, ocean resources, and environmental uses. These surveys are conducted for a variety of purposes such as seismic reflection mapping, geotechnical investigations of nearshore sand erosion and deposition, cable and pipeline routes, seafloor hazards and debris, and the location of sunken vessels and aircraft.

Geological surveys use a variety of non-rotary equipment to obtain shallow samples of soil for geotechnical information. The data obtained are used in nearshore sand erosion and deposition studies, the design of offshore structures (e.g., pipelines, marine terminals, platforms, piers), and technical and environmental analyses of offshore operations.

The Commission has been the state agency with jurisdiction over geological and geophysical survey activities in state waters since 1941 when the Legislature added section 6826 to the Public Resources Code. The Commission has issued permits to conduct survey activities on sovereign lands in state waters since 1945.

In 2013, the Commission updated the terms and conditions of its low energy offshore geophysical permits to incorporate the most up-to-date science regarding the potential impacts of surveys on marine life and the coastal environment. As part of the update, the Commission prepared a Mitigated Negative Declaration to comply with the California Environmental Quality Act (CEQA). The intent of the update was to establish consistent guidance, limitations, and permit conditions to ensure that the activities of permittees do not result in a significant effect on the environment. When it approved the update, the Commission directed staff to report back in one year on the administration of the program.

In 2014, staff reported back to the Commission. The staff report found permit enforcement and compliance to be a concern and noted that permittees expressed concern about unpermitted operators conducting surveys in state waters. Survey

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companies operating outside of the permit requirements were seen to have a competitive advantage by avoiding compliance costs.

In response to the report, the Commission directed staff to explore legislative and regulatory changes to improve permit compliance. As a first step in addressing the enforcement concerns, staff recommends modernizing existing law to remove the Commission's geophysical permit authority from a strictly oil and gas related code and to require updated implementing regulations.

Commission staff recommends relocating its statutory authority to issue geophysical and geological permits from the provisions of existing law involving oil and gas leasing to the provisions of existing law involving the Commission's general duties. Staff feels this is appropriate because most permitted surveys are for non-oil and -gas purposes.

Staff recommends a clear, one section addition to Division 6 of the Public Resources Code providing the Commission with authority to permit geophysical surveys on granted lands and requiring the Commission to promulgate implementing regulations for the issuance of geophysical permits. Moving the permissive language for geophysical permits to a general section of the code is a non-substantive change intended to clarify and modernize the code. These changes are intended to assist in obtaining compliance from operators and minimizing risk to the marine environment.

**STAFF RECOMMENDATION:**

Commission staff recommends that the Commission sponsor legislation in the 2015-16 legislative session to change the statutory placement of the Commission's geophysical and survey program and require the Commission to promulgate implementing regulations.

**EXHIBITS:**

- A. Proposed bill language

**RECOMMENDED ACTION:**

IT IS RECOMMENDED THAT THE COMMISSION:

1. Sponsor legislation in the 2015-16 legislative session to change the statutory placement of the Commission's geophysical survey program and require the Commission to promulgate implementing regulations.

## EXHIBIT A

1. Add a new Public Resources Code section within the State Lands Commission general administrative authority entitled: Permits for geophysical survey on state lands

*(a) The commission may authorize, by permit, geophysical surveys on state lands subject to terms and conditions the commission may specify to ensure public safety and protection of the environment.*

*(b) The commission shall adopt regulations to aid in the implementation of subdivision (a) and the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, with respect to authorization of survey activities.*

2. Amend Public Resources Code section 6826 as follows:

~~(a) The commission may permit geological or geophysical surveys on state lands and may grant permits therefor, but the permit~~ **Geological or geophysical surveys conducted on state land for purposes of exploring or prospecting for oil, gas, or other minerals,** ~~shall not give the permittee any preferential right to an oil and gas, **or mineral** lease.~~ The taking of cores and other samples may be conducted on and under state lands; provided, that the commission shall require that a permit first be obtained covering such types of drilling **or sampling** operations for the purpose of obtaining geological samples as the commission may determine by regulation, and upon such terms and conditions as the commission may specify by regulation, but the permit shall not give the permittee any preferential right to an oil and gas **or mineral** lease.

~~(b) The commission shall require, as a condition to the issuance of any permit **to** for the conduct of geological or geophysical surveys on tide and submerged lands **for purposes of exploring or prospecting for oil, gas, or other minerals under this section**, that the permittee make available to the commission, upon request, all factual and physical exploration results, logs, and records resulting from the operations under the permit. Any factual or physical exploration results, logs, or records which the permittee is required to make available to the commission shall be for the confidential use of the commission and shall not be open to inspection by any person or agency. The commission may, however, make the exploration results, logs, and records available to those governmental agencies which need the information in order to evaluate or regulate those tide and submerged lands and adjacent lands; provided, however, that the commission shall enter into a contractual agreement with those governmental agencies specifying the purposes for which the exploration results, logs, and records may be used and requiring the exploration results, logs, and records to be maintained in confidence. The contractual agreements shall specify the person who will~~

examine and be responsible for the confidentiality of the information. The information shall not be open to inspection by any other person or agency without the written consent of the permittee.

**(c)** It is a misdemeanor for any member of the commission, any officer or employee of the commission, or any person performing any function or work assigned to him or her by the commission, or any governmental agency or employee utilizing data pursuant to an agreement of confidentiality provided for in subdivision (b), to disclose to any person who is not a member, officer, employee of the commission, or authorized person pursuant to subdivision (b), or to any person who is not performing any function or work assigned to him or her by the commission, any information obtained from the inspection of factual or physical exploration results, logs, or records, or to use the information for purposes other than those authorized by the commission or for the administration of the functions, responsibilities, and duties vested in the commission by law, except upon the written consent of the permittee making the information available to the commission.